In the High Court Of Uttaranchal at Nainital.

Civil Revision No. 448/2001
(Old No. 35/1998)

State Bank of India, Branch at Lambgaon,
District Tehri Garhwal ..Revisionist.

Vs.

Surat Singh Rawat and another .. Respondents.

Dated: 25-10-2004

Hon'ble Rajesh Tandon, J.

By the present civil revision the applicant has prayed for quashing the order dated 12.11.1997.

Briefly state the facts of the case are that the decree-holder has applied for execution of the judgment and decree dated 27-9-1989 for a sum of Rs. 1,56,556.32 along with interest at the rate of 12.5% per annum with quarterly rest.

Learned counsel for the judgment-debtor has submitted that so far as the interest part is concerned the same may be allowed to the extent of the interest as mentioned in the agreement itself but not beyond the same after adjusting the amount paid by the judgment-debtor.

The executing court has disposed of the objections by modifying the interest part and rest of the decree remained unaffected. The counsel for the applicant has submitted that the executing court can not go behind the decree.

From the perusal of the record of the case it reveals that the bank has filed a suit for the recovery of the amount of Rs. 1,56,556.32 with interest at the rate of 12.5% per annum on the basis of the loan advanced in favour of the judgment-debtor. The judgment and decree was passed by the District Judge, Tehri Garhwal against the judgment-debtor on 27.2.1989 and the same remained unchallenged. The decree reads as under.

> " यह वाद प्रतिवादीगण के विरूद्ध अंकन 156556–32 रूपये प्राप्त करने हेतु मय अग्रिम एवं अन्तरिम ब्याज भुगतान के दिवस तक 12.5 प्रतिषत वार्षिक मय त्रैमासिक रेस्ट के साथ एकपक्षीय रू॰ से एकपक्षीय वाद ब्यय सहित डिक्री किया जाता है।"

It is settled law that the executing court can not go behind the decree. It has been held in *Rameshwar Das Gupta v. State of U.P. and another; AIR 1997 Supreme Court 410* as under:-

> *" It is well settled legal position that an executing court cannot travel beyond the order or decree under execution. It gets jurisdiction only to execute the order in accordance with the procedure laid down under Order 21, C.P.C.*
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> *In our view, the executing Court has exceeded its jurisdiction and the order is one without jurisdiction and is thereby a void order. It is true that the High court normally exercises its revisional jurisdiction under Section 115, C.P.C. but once it is held that the executing Court has exceeded its jurisdiction, it is but the duty of the High Court to correct the same."*
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> The Apex Court in the case of *Vasudev Dhanjibhai Modi vs. Rajabhai Abdul Rehman and others; AIR 1970 Supreme Court 1475* has held as under:-
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> *"A Court executing a decree can not go behind the decree between the parties or their representatives, it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties."*

In view of the above, the order passed by the executing Court is set aside. The decree shall be executed by the executing court subject to any concession made by the bank authorities in terms of the agreement between the parties, so far as interest part is concerned.

Consequently the revision is allowed.

(Rajesh Tandon, J)

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